

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CAPISTRANO UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. LA-CO-132
)	
v.)	
)	PERB Decision No. 294
CAPISTRANO UNIFIED EDUCATION)	
ASSOCIATION,)	
)	March 16, 1983
Respondent.)	

Appearances; M. Mari Merchat, Attorney (Walters, Bukey & Shelburne) for Capistrano Unified School District;
A. Eugene Huguenin, Jr., Attorney (California Teachers Association) for Capistrano Unified Education Association.

Before Gluck, Chairperson; Morgenstern and Burt, Members.

DECISION

GLUCK, Chairperson: The Capistrano Unified School District (District) excepts to the hearing officer's proposed decision dismissing its amended charge¹ that the Capistrano Unified Education Association (Association), per se, violated section 3548.3² and subsections 3543.6(c) and

¹The charge initially stated:

The premature and unauthorized release by the Association of the final report's contents constitutes a failure to bargain in good faith and a failure to utilize the impasse procedures in good faith.

²Section 3548.3 provides in relevant part:

(a) If the dispute is not settled within

(d)3 of the Educational Employment Relations Act (EERA)⁴
and section 36095 of the Public Employment Relations Board's
(PERB) rules and regulations⁵ by publicly releasing a

30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

3subsections 3543.6(c) and (d) state in part:

It shall be unlawful for an employee organization to:

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

⁴The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted.

⁵PERB's rules are codified at California Administrative Code, title 8, section 31001 et seq. Prior to September 20, 1982, the rules governing impasse procedures under the EERA were located at sections 36000 - 36095. Former rule 36095 of PERB's regulations states:

The public school employer shall make public the entire, verbatim final report signed by the chairperson of the factfinding panel within 10 days of its receipt by the parties. Such publication shall be effected by posting a notice that the factfinder report has been issued and is available to

factfinders¹ report in less than its entirety, prior to receipt and publication by the District.

The hearing officer only considered that part of the charge alleging violations of subsections 3543.6(c) and (d) and found that the Association's conduct was not so outrageous as to impede impasse procedures and negotiations. Accordingly, he found that no violation had been committed.

FACTS

On November 6, 1979, impasse was declared in negotiations between the District and the Association. Mediation failed to resolve the impasse, and on or about January 17, 1980, the matter was certified for factfinding.

The factfinding panel convened and began its inquiry on or about April 16. Kenneth Hall and Tom Brown, respectively, represented the District and the Association on the panel with Joe Henderson, serving as the neutral chair.

On or about May 13, 1980, Henderson's office mailed both the Association's and the District's copies of the factfinding panel's final report to the District's offices because he did not have the address for the Association. However, after

the public. The notice shall be posted in the locations normally used for posting public notices regarding regular meetings of the employer and shall indicate the times and places where the public may inspect a copy of the report. The employer shall insure that a reasonable number of copies shall be available to the public.

discovering clerical and arithmetic errors, the panel made a request, which the District honored, that the copies be returned unopened to the panel.

For negotiations, the Association engaged the services of the South Orange County Uniserv Unit and, during factfinding, Dan Saling, Executive Director of the Uniserv Unit, received numerous inquiries from the press and from Association members regarding the issuance of the report. Saling telephoned the office of Tom Brown on or about May 15, 1980, to ascertain whether Brown had received a copy of the final report and was informed that the report had been received by Brown on or about that date.

On the morning of May 16, 1980, having still not received a copy of the report, Saling asked Brown's secretary to read the factfinding report to him over the telephone. Saling's secretary took down the report verbatim as Brown's secretary dictated. The dictation, however, did not include the concurrence and dissent of the District's panel member which was inadvertantly omitted by Henderson's secretary. Later that same morning, Fred Swegles, a local reporter, called Saling about the report. Saling read his secretary's transcription of the report to Swegles and informed him that he did not have a copy of the final report at that time.

Swegles shortly thereafter phoned District Superintendent Jerome Thornsley and related his conversation with Saling about the report. Thornsley expressed his opinion that Saling's

release of information from the report was improper and informed Swegles that the District had not yet received a copy of the final report.

Later, at approximately 11:45 a.m. on May 16, the District did receive a copy of the report. However, this copy also did not include the concurrence and dissent. The omitted portions were mailed separately after the District notified the factfinding chairman's office of the error.

Saling received a copy of the report about 1:00 or 2:00 p.m. on May 16, but the record does not establish whether he and Mr. Brown received complete copies or that Saling knew the report dictated to him by Brown's secretary should have included the District's separate opinion.

Two local newspapers published articles on the afternoon of May 16, 1980, which summarized portions of the factfinding report. The article written by Swegles included a summary of his conversations with Saling and Thornsley.

On the morning of May 19, 1980, the District formally released the factfinding report to the public, providing copies at its office and at schools throughout the District. Copies were also distributed to the press at the District's Board of Trustees' meeting later that same day.

Negotiations between the District and the Association continued after the final report was issued. On or about June 2, 1980 the parties signed a final agreement and negotiations were concluded.

DISCUSSION

The District contends that the Association violated EERA by releasing an incomplete version of the factfinders¹ report prior to the District's receipt of it and that this action directly contravened the expressed directives of section 3548.3 and constituted a per se violation of the Act because it "had a clear potential to frustrate negotiations."

It is undisputed that the Association's agent publicly released an incomplete version (without the District panelist's concurrence and dissent) of a factfinders¹ report prior to the parties' receipt of the full report. This contravened the statutory requirements of section 3548.3 which states:

Any findings of fact and recommended terms of settlement [of the fact finding panel] shall be submitted in writing to the parties privately before they are made public.
(Emphasis added.)

This section mandates the parties to maintain the report in confidence until they have both received their respective copies. By breaching this provision, the Association violated subsections 3543.6(c) and (d).⁶

Further, we have construed section 3548.3 to require that "[a]ny release must be of the final report, unaltered and in its

⁶We dismiss the District's exception that section 3548.3 was also violated. This section establishes only the duties of the parties; violations are covered by sections 3543.5 and 3543.6.

entirety." Las Virgenes Unified School District (6/12/79) PERB Order No. IR-8. The Association's failure to comply with this holding independently violated subsections 3543.6(c) and (d).

The District's contention that the Association's conduct violated EERA because the District has sole authority to publish the factfinders' report is without merit. The District relies on language from Las Virgenes, supra, which requires "confidentiality pending official publication of the factfinders¹ report. . . ." It argues that "official publication" refers to that part of section 3548.3 which requires that the public school employer publicly release the document and maintains that, consequently, the Association is barred from releasing it. This section, while obligating the District to release the report in a prescribed manner, does not grant it exclusive authority to publish the document or prohibit the exclusive representative from doing so. By "official publication" in Las Virgenes, supra, we were referring to the panel's issuance of the report to the negotiating parties.

ORDER

Upon the foregoing facts, conclusions of law, and the entire record in this case and, pursuant to Government Code subsection 3541.5(c), the Public Employment Relations Board hereby ORDERS that the Capistrano Unified Education Association shall:

CEASE AND DESIST from violating subsections 3543.6(c) and (d) by refusing to negotiate and participate in impasse procedures in good faith by prematurely releasing incomplete versions of a factfinders¹ report prior to its receipt by the negotiating parties.

The Board further ORDERS that the Capistrano Unified Education Association shall take the following AFFIRMATIVE ACTIONS designed to effectuate the policies of the Act:

(1) Within thirty (30) workdays of service of this decision, post at all school sites and all other work locations, upon those bulletin boards where the Capistrano Unified Education Association's notices are customarily placed, copies of the attached Notice of Employees (Appendix A). Such posting shall be maintained for a period of thirty (30) consecutive workdays.

(2) At the end of the posting period, notify the Los Angeles regional director of the Public Employment Relations Board, in writing, of the steps taken by the Capistrano Unified Education Association to comply with this Order.

Members Morgenstern and Burt joined in this Decision.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY NOTICE OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CO-132, Capistrano Unified School District v. Capistrano Unified Education Association in which all parties had an opportunity to participate, it has been found that the Capistrano Unified Education Association violated the Educational Employment Relations Act, subsections 3543.6(c) and (d) by prematurely releasing an incomplete version of a factfinders' report in contravention of section 3548.3. As a result we have been ordered to post this Notice and abide by the following:

We will:

A. CEASE AND DESIST FROM:

Refusing to negotiate and participate in statutory impasse procedures in good faith by prematurely releasing an incomplete version of a factfinders' report prior to its receipt by the negotiating parties.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

Copies of this Notice are to be posted at all work locations where notices to employees are customarily placed and will remain there for thirty (30) consecutive workdays.

CAPISTRANO UNIFIED EDUCATION
ASSOCIATION

Dated: _____ By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAINED POSTED FOR THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.,